

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NOV 08 2004

MICHAEL N. MILBY, CLERK OF COURT

UNITED STATES OF AMERICA,)	
Plaintiff,)	Crim. No. H-04-25 (Lake, J.)
v.)	
JEFFREY K. SKILLING and RICHARD)	
A. CAUSEY, and KENNETH LAY,)	
Defendants.)	

**DECLARATION OF RUSSELL SCOTT ARMSTRONG IN SUPPORT OF
DEFENDANT JEFFREY SKILLING'S MOTION TO TRANSFER VENUE**

I.
INTRODUCTION

A. Nature of Report

1. I submit this declaration in support of Jeffrey Skilling's motion to transfer venue.
2. I have been asked to review and analyze the news media coverage and publicity in Houston, Texas as it relates to Mr. Skilling, his former employer, the Enron Corporation, and to other information related to the Enron "scandal" and subsequent events, and to compare that coverage to news media coverage in Atlanta, Georgia; Denver, Colorado; and Phoenix, Arizona.

B. Qualifications

3. I have been a professional journalist for 30 years. I am the executive director of the Information Trust, a Washington, DC-based organization devoted to improving the quality of journalism. I worked for *The Washington Post* as a reporter covering national security matters from 1976 through 1985. I have worked for many national newspapers, television and radio networks in the course of my career. Along with Bob Woodward, I wrote *The Brethren*, a narrative account of the Supreme Court from 1969 through 1976 describing the Court's inner workings. I assisted Bob Woodward and Carl Bernstein in the research and writing of *The Final Days*. I taught journalism as a visiting scholar at the American University School of Communication and have lectured on journalism and/or investigative techniques at various other institutions including: Brown University, Columbia University Graduate School of Journalism, and Harvard University, among others.

4. I was qualified as an expert witness in the analysis of media coverage and editorial decision-making with regard to venue issues by Chief Judge Richard P. Matsch in United States v. Timothy James McVeigh and Terry Lynn Nichols. See United States v. McVeigh, 918 F. Supp. 1467, 1468- 50 (W.D. Okla. 1996).

5. I also have prepared and submitted expert testimony for introduction in other federal court cases on media coverage and editorial decision-making as they relate to venue issues in the United States District Court for the Central District of California and for the U.S. District Court for the Northern District of Alabama.

6. I was qualified as an expert witness in media coverage, use of confidential sources, and libel by Federal District Court Judge Ewing Werlein, Jr. in *MMAR Group, Inc. v. Dow Jones & Co., Inc.*, 987 F.Supp. 535 (S.D. Tex. 1997), by Judge Geoffrey Alprin in *Prentice v. McPhilemy*, 27 Med. L. Rptr. 2377 (D.C. Sup. Ct. 1999), and by Texas District Court Judge Joseph H. Hart in *Jack Taylor, et al. v. Barry Switzer, et al.*, (No. 4-91-001; 126th District Travis County). Additionally, I have been qualified as an expert witness on journalistic practices and procedures by federal District Judge Joseph Young in the case of *U.S. v. Morison*, 604 F. Supp. 655 (D. Md. 1985).

7. During the last 30 years, I have covered and reported on scores of federal investigations (including those involving financial crimes) involving the Department of Justice, the Federal Bureau of Investigation, and the Securities and Exchange Commission. I was the senior investigator on the Senate Select Committee on Presidential Campaigns (The Senate Watergate Committee) and, as such, investigated the conduct and practices of the FBI, the Department of Justice and the United States Attorney for the District of Columbia. I have a working journalist's knowledge of financial derivatives, hedge funds, mark to market accounting, and special purpose entities.¹

¹ Further details of my qualifications, including publications, are set forth in my curriculum vitae attached as Armstrong Exhibit ("Armstrong Ex.") 1.

C. Materials Surveyed

8. In preparing this report, I conducted an extensive and comprehensive review of the available news media coverage and publicity (by newspapers, network affiliated broadcast television stations, dominant local websites, and other assorted local media) of Enron-related issues in the four venues just mentioned for the period January 1, 2001 through late October 2004. For further context, I also reviewed the coverage of "national newspapers of record" -- the New York Times, the Wall Street Journal, and the Washington Post -- and the coverage of the four major television broadcast networks' evening news broadcasts with respect to the same issues for the same period.

D. Overview

9. My analysis:

- a. compares the Houston, Atlanta, Denver, and Phoenix print, television, and other news coverage of Enron, and particularly of Jeffrey Skilling, Ken Lay, and Richard Causey, in terms of frequency of reporting, editorial content, theme and imagery, level of detail, sourcing, prominence of display, and intensity of emotional impact;
- b. identifies the manner by which the local news media through a combination of the measures described in paragraph 9(a), traditionally identify common community problems and describe them to the community. The local news media in Houston, unlike that media in the other three venues, have identified the Enron "scandal" as a local-problem with a perceived community need to resolve damage to a variety of Houston victims.
- c. describes how local news media provide a "feedback loop," in which the local media's perceptions of the community's values and interests are developed and

communicated back to the community, reabsorbed and evaluated by the local media through letters to the editor, opinion commentaries, cyber equivalents such as "blogs," and media interviews of community leaders and individuals, and then re-published and re-broadcast to the community. This cycle clarifies, amplifies and reinforces community values and interests;

- d. discusses how, in times of crisis or widespread public trauma, of which the demise of Enron is a prime example, it is traditional for the local news media, often led by the community's major newspaper, to reassure the community that the appropriate community institutions have identified the problem and are working to solve it; and
- e. describes how in the case of the Enron scandal, the local news media in Houston have sought to inform and "reassure" the community that federal prosecutors: (a) have woven together the details of the criminal activities and misfeasance inside the Enron scandal; (b) have identified those "responsible" as the former top leaders of Enron, Skilling and Lay, and (c) will convict them with the testimony of their former subordinates at Enron, who will link Skilling and Lay to crimes and activities to which the subordinates have already confessed in their own guilty pleas. In this manner, the local news media in Houston, and in Houston only, have communicated and amplified a wide-spread community expectation that the "details" of Enron-related crimes are known and verified, indeed are catalogued regularly in the Houston Chronicle, and that Skilling and Lay will be prosecuted and held responsible for what has transpired.

E. General Conclusions

10. I have found a dramatic difference, both quantitatively and qualitatively, between the local news media in Houston and the local news media from three comparable venues, Atlanta, Denver, and Phoenix, with respect to coverage of Enron and particularly two of the defendants in this case, Jeffrey Skilling and Ken Lay. The Houston Chronicle, the major local paper with considerable journalism resources, has played the customary role in the local news market of defining the elements of the Enron story as major issue for the Houston community and has done so by devoting an unusual concentration of labor and intellectual focus over an extended period.

11. The local Houston television news media have largely followed the Chronicle's lead, both with respect to following the same editorial theme and in dedicating more resources than it customarily provides to local issues. Just as the Chronicle has consistently emphasized its coverage with unusually prominent presentations and placement of Enron-related news, Houston television news directors have provided viewers with extensive video coverage of Enron and its former chief executives, enhanced by a variety of special features emphasizing its importance to the community.

12. In the comparable venues I examined, none of the local news media, either in print or television, has devoted anything approaching the commitment of extra resources, attention, or emphasis I observed in Houston. In these other local markets, the news media's investment in the coverage of Enron-related stories did not go beyond that which is normally given to an important national story. None treated it as an important local story.

13. Through consistent editorial emphasis, intense presentation and prominent display, the local Houston news media collectively have (a) informed and sensitized their readers and viewers to the plight of the perceived victims of Enron, including the considerable dislocation suffered throughout the Houston community, (b) identified those perceived to be

responsible for an expanding litany of crimes, and (c) actively encouraged a community-wide expectation that a careful and diligent prosecutorial effort is not only underway, but will also result in convictions of the most prominent perceived culprits, Skilling and Lay, in order to bring closure to the aggrieved Houston community. Metaphorically, the Houston media portrays the prosecutors as weaving together evidence to solve for Houstonians the puzzle of "what happened at Enron and who is responsible?," a process that includes the trial -- and conviction -- of these defendants.

14. This concentration by the local Houston news media on the prosecutors piecing together a puzzle includes the regular use of legal experts and others to interpret for news consumers the pace and degree of progress of the investigation(s) and prosecution(s), the relentless accumulation of details by the print media, the unusually intense placement and prominent display of Enron-related news content. It is unique to Houston. In Atlanta, Denver, and Phoenix, there is no similar indication of the community-wide expectation found in the Houston news media that Skilling and Lay are to be brought to "justice."

II.

DEMOGRAPHICS

15. In this case, I was asked to assess the media's potential impact on four communities: (1) the Houston Division of the Southern District Texas (hereinafter "Houston" or the "Houston venue"); (2) the Atlanta Division of the Northern District Atlanta (hereinafter "Atlanta" or the "Atlanta venue"); (3) the Denver Division of the District Colorado (hereinafter "Denver" or "Denver venue"); and (4) the Phoenix Division of the District Arizona (hereinafter "Phoenix" or "Phoenix venue") (collectively, "the other venues").

16. I began my analysis by identifying the dominant principal newspaper(s), locally affiliated network television stations (*i.e.* the local affiliates for ABC, CBS, NBC, Fox), and prominent independent television stations for the counties comprising the jury pools for each of the relevant venues.² The dominant newspapers and television stations in each venue are identified in the table below:

² Jury pools for the Houston Division of the Southern District Texas are selected from the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton. Jury pools for the Atlanta Division of the Northern District Georgia are selected from the counties of Cherokee, Clayton, Cobb, deKalb, Douglas, Fulton, Gwinnett, Henry, Newton and Rockdale. Jury pools for the Denver Division of the District Colorado are selected from the counties of Adams, Arapahoe, Boulder, Broomfield, Chaffee, Clear, Creek, Douglas, Elbert, Park, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Teller, Washington, Weld and Yuma. Jury pools for the Phoenix Division of the District Arizona are selected from the counties of Gila, La Paz, Maricopa, Pinal and Yuma. *See* Armstrong Ex. 2-5 (jury plans)

Venue ³	Dominant Newspaper(s)	Television Stations
Houston	Houston Chronicle	ABC - KTRK CBS - KHOU NBC - KPRC Fox - KRIV Independent - Hou24-NS24t
Atlanta	Atlanta Journal-Constitution	ABC - WSB CBS - WGCL NBC - WXIA Fox - WAGA Independent - WTBS
Denver	Denver Post Rocky Mountain News ⁴	ABC - KMGH CBS - KCNC NBC - KUSA Fox - KDVR Independent - N/A
Phoenix	Arizona Republic	ABC - KNXV CBS - KPHO NBC - KPNX Fox - KSAZ Independent - KTVK

17. As demonstrated in the table attached as Exhibit 15, these media collectively serve the geographic area in which vast majority of the residents of the selected counties. In all four venues examined, local television station news shows reach at least 95% of the respective geographic areas. In the Houston, Atlanta, and Phoenix venues, the dominant newspapers reach 95% or more of the area. In the Denver venue, the two newspapers reach roughly 2/3 of the area. Two outlying counties, Larimer and Weld, comprise the majority of the portion of the Denver venue not covered by the newspapers. It seems highly unlikely that residents in those outlying counties would receive more coverage of Enron-related stories than residents in the areas which the newspapers reach.

³ *Id.* Exs. 3-13 (Comparability Chart; Media Week and ABC data).

⁴ The Denver Post and Rocky Mountain News entered into a joint publishing agreement in 2001, operate separately Monday through Friday, and publish jointly on Saturday and Sunday.

III.

COMPARISON OF MEDIA IN HOUSTON, ATLANTA, DENVER AND PHOENIX IN
TERMS OF THEIR TREATMENT OF ENRON AND THESE DEFENDANTS

A. Coverage of the Rise and Fall of Enron

18. Prior to Fall 2001, the Chronicle, like nearly all of Houston, viewed Enron as an innovative, exciting “can’t miss” company and its executives, especially Skilling and Lay, as business and cultural figures with demi-god status in the local and national business community.⁵ News stories and editorial commentary compared Lay to a local patriarch and community leader in the images of legendary Houstonians Jesse Jones and Ben Love, even suggesting that he run for Mayor.⁶ Skilling, too, was heaped with praise. In 2001 alone, the Chronicle:

- Reported that the Texas eComm Association had honored Skilling for his tremendous “contributions to the state’s Internet economy”;
- Touted Skilling’s membership on the “luminous” Greater Houston Community Foundation, which manages and assures proper usage of various community funds;
- Covered Skilling’s announcement that Enron donated \$1 million for scholarships to Houston area high school students;
- Observed that Skilling had transformed Enron from a “stodgy” company into a market “player” that “keeps raising [the] bar,” and that Skilling’s “revolutionary” management philosophy allowed Enron and its thousands of Houston employees to flourish;
- Repeatedly referred to Skilling in covering “Energy Giants Have a Season to Remember”;

⁵ Declaration of David J. Marroso in Support of Defendants’ Motion to Transfer Venue Exhibit (“Marroso Ex.”) 79, 81,84 (*Houston Chronicle*). Rather than submit duplicate exhibits, I refer to newspaper articles cited in this report by their designations in Mr. Marroso’s declaration.

⁶ *Id.* Exs. 9, 86-88 (*Houston Chronicle*)

- Identified Skilling as one of the "100 Who's Who" of Houston; and
- Likened Skilling and Lay to the exalted, saying their new offices will "hover above, giving the chieftains a heavenly view of their realm."⁷

19. Prior to the fall of 2001, the principal papers in the other venues studied -- The Arizona Republic, Atlanta Journal-Constitution, Rocky Mountain News, and Denver Post -- ran stories about Enron reporting on the energy giant's dramatic successes, the rise and fluctuations of its stock value on Wall Street and its role in the 2001 West Coast energy crisis. They did not report nearly as often and rarely treated Enron with the sort of community reverence and awe that characterized Enron's coverage in the Chronicle.

20. Skilling was mentioned only rarely in local media outside Houston, and in those few instances when he was referenced, Skilling was portrayed as a savvy businessperson or a donor to political causes, but without the celebrity, "rock star" status that characterized his Houston image. In January and May 2001, the Atlanta-Journal Constitution described Skilling as "among the prominent \$100,000 contributors" to President Bush's campaign and as one of the Business Press's "top 5 CEOs."⁸ The Arizona Republic reported on Skilling as the target of a pie heaved by an energy activist when he defended Enron's role in the California energy market.⁹ So unconcerned with the former-CEO were the other papers that when Skilling resigned from Enron in August 2001, it was treated to only cursory mention in the business sections of the papers in Atlanta, Denver and Phoenix.¹⁰

21. Even after stories emerged nationally questioning Enron's economic viability and after investigations of allegations of wrongdoing surfaced in the wake of Fastow's dismissal, a Chronicle columnist stood by Enron, assuring Houston citizens -- many of whom owned Enron stock -- that the company would "weather the storm." The coverage of the Houston Chronicle

⁷ *Id.* Exs. 89-96 (*Houston Chronicle*).

⁸ *Id.* Exs. 118, 231 (*Atlanta Journal-Constitution*).

⁹ *Id.* Ex. 232 (*Arizona Republic*).

¹⁰ *Id.* Exs. 233, 234, 235 (*Arizona Republic, Atlanta Journal Constitution, Denver Post*).

and most other local media in Houston continued to give Enron the benefit of the doubt well after questions had been raised in the national business press.

Earnings remain healthy. Despite the stock price cratering.

Enron's earnings remain strong and growing, with a 32 percent increase in earnings per share in the last quarter. It's still a company with innovative people who have shown they can turn ideas into profitable businesses. That's why the current problems will blow over.¹¹

22. On December 2, 2001, Enron declared bankruptcy. Shortly thereafter, under new editorial leadership, the Chronicle began to refocus its editorial attention and analysis to address the questions which had surfaced widely elsewhere. Local criticism of the Chronicle's inattention to the nature and magnitude of the Enron -- and community crisis -- expanded to national criticism.¹² A new editor was hired and staffing and editorial deployments shifted in the two months prior to his arrival in February 2002.¹³

B. Deployment of Resources

(i) Print Media

23. Enron was and is a story of national significance. National newspapers, such as the New York Times, the Wall Street Journal, and, to a lesser degree, the Washington Post, have covered the financial, industrial, political, and criminal aspects of the Enron story, but not at all to the same degree or with the same emphasis as the Houston media.

¹¹ *Id.* Ex. 251 (*Houston Chronicle*).

¹² *Id.* Ex. 124 (*Houston Press*) ("The most obvious change so far is the departure of longtime business columnist Jim 'Enron's Great!' Barlow.").

¹³ *Id.* Ex. 124 (*Houston Press*) ("The most obvious change so far is the departure of longtime business columnist Jim 'Enron's Great!' Barlow.").

24. Editors at the major metropolitan newspapers in Atlanta (Atlanta Journal Constitution), Phoenix (Arizona Republic), and Denver (Denver Post and Rocky Mountain News) also have allocated their journalistic resources to the Enron story, but, understandably, in the manner they believe is most appropriate to serve their communities. This has meant as high a quality of coverage as they can produce using news wire and news service copy on a regular basis and assigning fewer reporters producing shorter, less detailed stories less frequently on fewer Enron topics than has been the case in Houston.

25. Because the local Houston news media see Enron differently -- as *their* local story -- they have emerged in a singular class when it came to dedicating resources and attention to Enron coverage.

26. As the Houston Chronicle refocused its coverage between late 2001 and early 2002, it sought to address the questions about the sudden and jolting demise of Enron to which Houstonians needed "answers." As the major media outlet in the venue, the Chronicle sought to answer several questions, including, among others, (a) what was the damage to Enron employees who lost their jobs and retirement savings; (b) what was the human impact and how great was the community's dislocation; (c) how had the decline come so abruptly, and, most important, (d) who was responsible? The Chronicle deployed enormous resources, both absolutely and in comparison to papers in the other communities, to answering these questions.

27. From late 2001 through mid-2003, between 8 and 12 Chronicle reporters worked the Enron story full-time or nearly full-time. During that same timeframe, the Atlanta Journal Constitution never had more than half that many reporters dedicated full-time to Enron, and the other papers surveyed had fewer than the Journal Constitution.

28. Moreover, all four papers began scaling back their deployed resources much earlier than the Chronicle. Even today, it appears that at least 3 Chronicle reporters have been

devoting full-time or nearly full-time to Enron. None of the papers I examined currently has a single reporter covering the story full-time.¹⁴

29. The production rates are equally impressive. The Chronicle's full-time reporters churn out between 30 and 50 Enron related stories per month, approximately 5 to 8 times the number of articles written by all reporters for the other four papers combined.¹⁵

30. Thirty-three (33) Chronicle reporters have written 20 or more Enron stories since December 2001. The Atlanta Journal-Constitution had less than one-quarter that many reporters (8) write 20 or more Enron stories. The Arizona Republic, Denver Post, and Rocky Mountain News had one-fifth the number of Chronicle reporters write at least 20 Enron articles (6, 5, 6, respectively).¹⁶

31. Reporters from several different sections of the Chronicle contributed to the paper's Enron coverage a phenomenon that is extremely rare, not only because it spreads thin the reporting staff, but also requires supervision of multiple editors over the same extended period.¹⁷

32. Such a level of effort is seen only very rarely at even the largest national daily newspapers. Even then, in cases such as the 9/11 terrorist attacks, foreign wars and tragic events, it is extremely rare to have such large deployments extended for so long. I do not recall another instance where a local paper dedicated as many resources to a single topic over such an extended period of time as the Houston Chronicle has dedicated to Enron.

¹⁴ Armstrong Ex. 16.

¹⁵ *Id.* at Ex. 16.

¹⁶ *Id.* at Ex. 16.

¹⁷ *Id.* at Ex. 16.

(ii) Television

33. Houston's television media, unlike the television media in the other venues examined, demonstrates an effort and commitment to add to the depth, prominence, and attractiveness of its Enron coverage.

34. Compared to television in the other venue, Houston's television media (a) puts more live coverage on the air, which requires dispatching more field crews and correspondents with satellite links back to the station; (b) conducts more interviews with experts and commentators; (c) covers more press conferences; (d) produces more multiple individual news segments within a single news show, which requires assigning multiple reporters covering different aspects of the story; (e) updates information more regularly, which requires rewriting news budgets and generating new scripts between shows in a single day; (f) produces and uses more "teasers" to lead viewers into segments across news time slots from prior shows; (g) creates more special graphics, including bullet point charts and distinctively designed special "Enron" story logos; (h) utilizes more special camera techniques not normally seen in daily television news, including zoom lens shots and slow motion; and (i) employs more file footage, such as footage of defendants' "perp walks," so that it will match the length of voice-overs, fades and unusual splices to make segments blend better and capture reader attention.

35. These features require more production time and bigger budgets and are indicative of an editorial decision by the Houston television station's news directors that the Enron story is extraordinarily important to viewers who will watch more often and will bring in ratings and ad revenue.

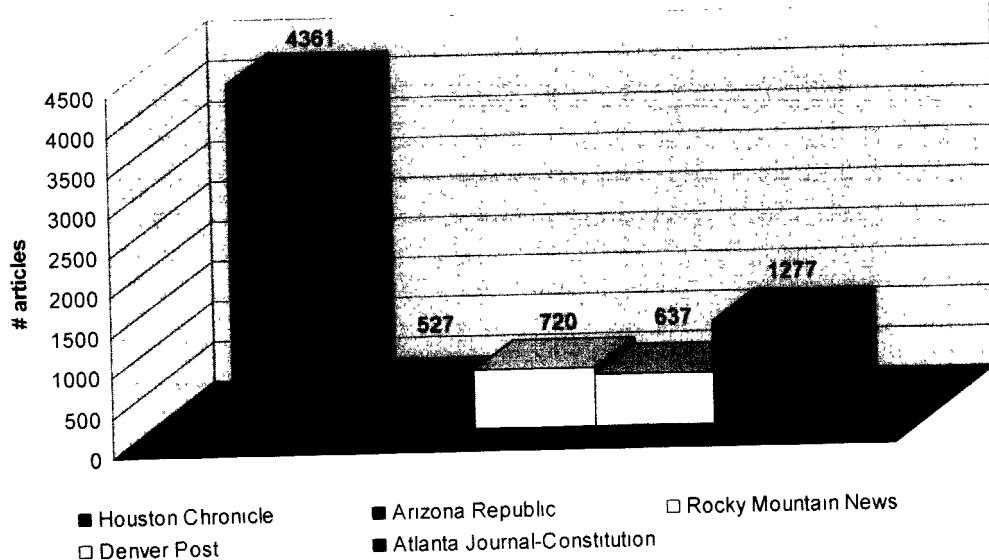
C. Intensity of Coverage

(i) Print Media

36. By every measure, since December 2, 2001, the day Enron declared bankruptcy, the Chronicle has devoted more reportorial resources over a longer time to produce a far greater number of stories about Enron and Skilling, Lay, and Causey than any of the four major papers servicing the alternate venues. Indeed, on most Enron related topics, the Chronicle has run several times the number of stories in the other four papers combined.¹⁸

37. Between December 2, 2001 and October 15, 2004, stories involving Enron (not including sports-related stories mentioning Enron Field) appeared in 4,361 Houston Chronicle articles, 3.4 times the number of stories appearing in the Atlanta Journal-Constitution (1,277), 6 times the number in the Rocky Mountain News (720), 7 times the number in Denver Post (637), and 8 times the number in the Arizona Republic (527). See graph below.¹⁹

"Enron" in Article (not Enron Field) since 12/2/01

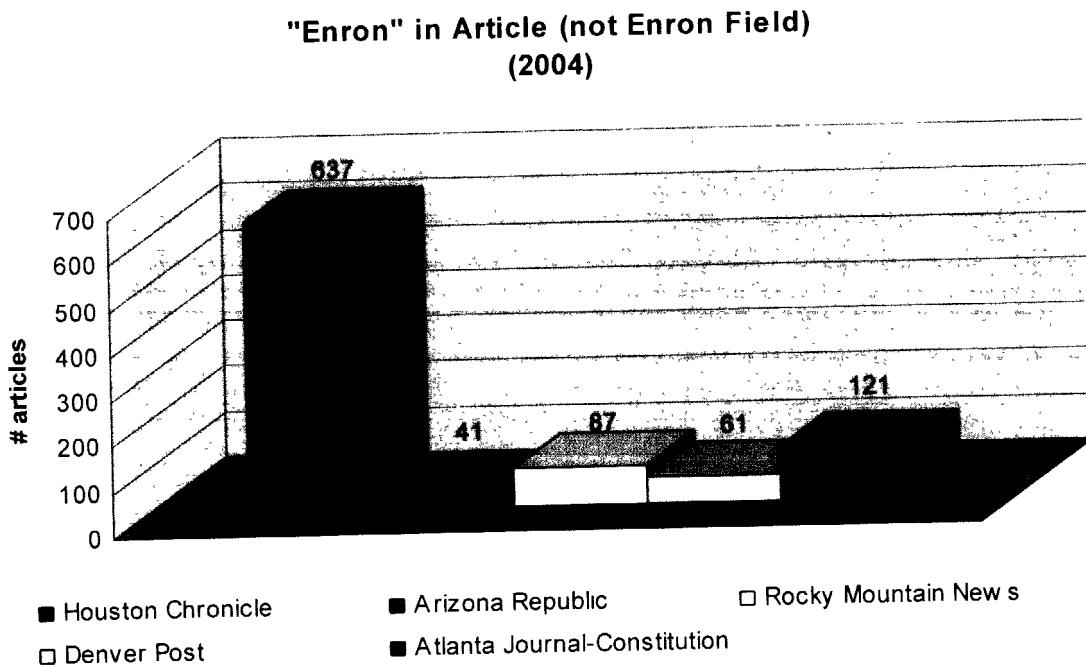


¹⁸ Substantial additional data to the same effect can be found at Armstrong Ex. 14.

¹⁹ *Id.* Ex. 14.

38. In that same time frame, 435 articles discussing Mr. Skilling appeared in the Chronicle, more than 4 times the number of such articles appearing in the 4 other papers combined. (Atlanta Journal-Constitution 46, Denver Post 25, Rocky Mountain News 19, Arizona Republic 14).²⁰

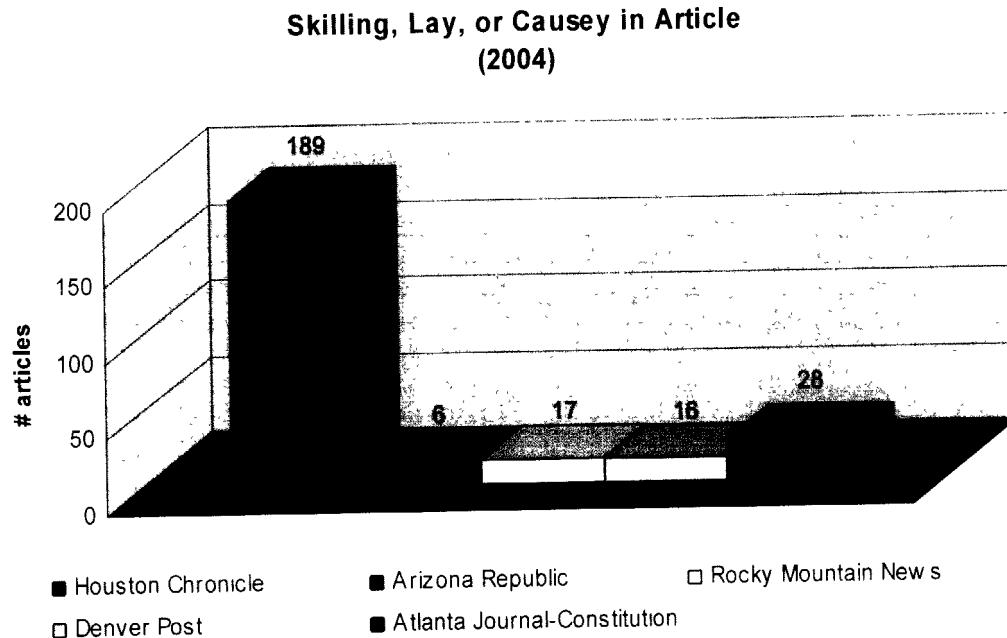
39. In 2004 alone, there were 637 Enron related articles in the Chronicle (not including sports-related Enron Field mentions), 5.2 times the number of such stories in the Atlanta Journal-Constitution (121), 7.3 times the number that appeared in the Rocky Mountain News (87), 10.4 times the number that appeared in the Denver Post (61) and 15.5 times the number that appeared in the Arizona Republic (41). *See* graph below.²¹



²⁰ *Id.* Ex. 14.

²¹ *Id.* Ex. 14.

40. Just this year, the Chronicle has published 189 articles about Skilling, Lay, or Causey, almost 3 times the number of similar stories in the 4 other papers combined (Atlanta Journal-Constitution 28, Denver Post 16, Rocky Mountain News 17, Arizona Republic 6). *See* graph below.²²



²² *Id.* Ex. 14. Focusing on Mr. Skilling alone produces similar results. In the first 10 months of 2004, the Chronicle ran 129 stories related to Skilling, 5 times as many stories about Skilling that ran in the other 4 papers combined (Atlanta Journal-Constitution 12, Denver Post 7, Rocky Mountain News 4, Arizona Republic 4).

(ii) Television

41. As mentioned previously, print drives the direction and emphasis of television news. Television news editors dispatch more resources, allocate more air time, cover more press conferences, interview more experts, create more special effects, and utilize more "teases" for topics the print media deems "newsworthy" to the local community.

42. Each television station airs multiple news broadcasts per day (e.g., 5:00 a.m., 6:00 a.m., 12:00 p.m., 5:00 p.m., 6:00 p.m., 10:00 p.m.), and locally newsworthy stories are often covered on multiple broadcasts per day.

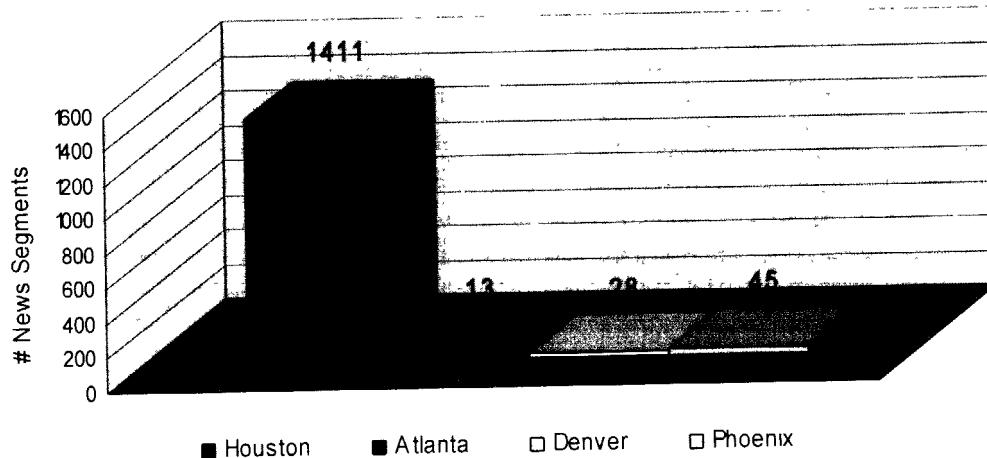
43. As was the case in print, the number of Enron related television news segments in Houston dwarfs the number in Atlanta, Denver, and Phoenix.²³ Also like print, the interest in Enron, Skilling, and Lay of television news media in those three venues has faded over the past few years. This is not the case in Houston. In 2004 alone, there have been more than 6,000 Enron-related news segments in Houston, 10 times the number of Enron-related news segments in the other three venues combined.²⁴

²³ Quantitative data for television media incorporated in this report is derived from Bacon's Information, Inc. ("Bacon's"), a company specializing in collecting information from television broadcasts from around the country and for certain periods from Video Monitoring, a similar service available through Lexis/Nexis. See Armstrong Ex. 14.

²⁴ Armstrong Ex. 14. "News segments" include broadcasts and teases.

44. Also in 2004, there have been more than 1,400 news segments in Houston about Skilling, more than 16.4 times the number of Skilling-related news segments in the other three venues combined. See graph below.²⁵

Skilling in News Segment

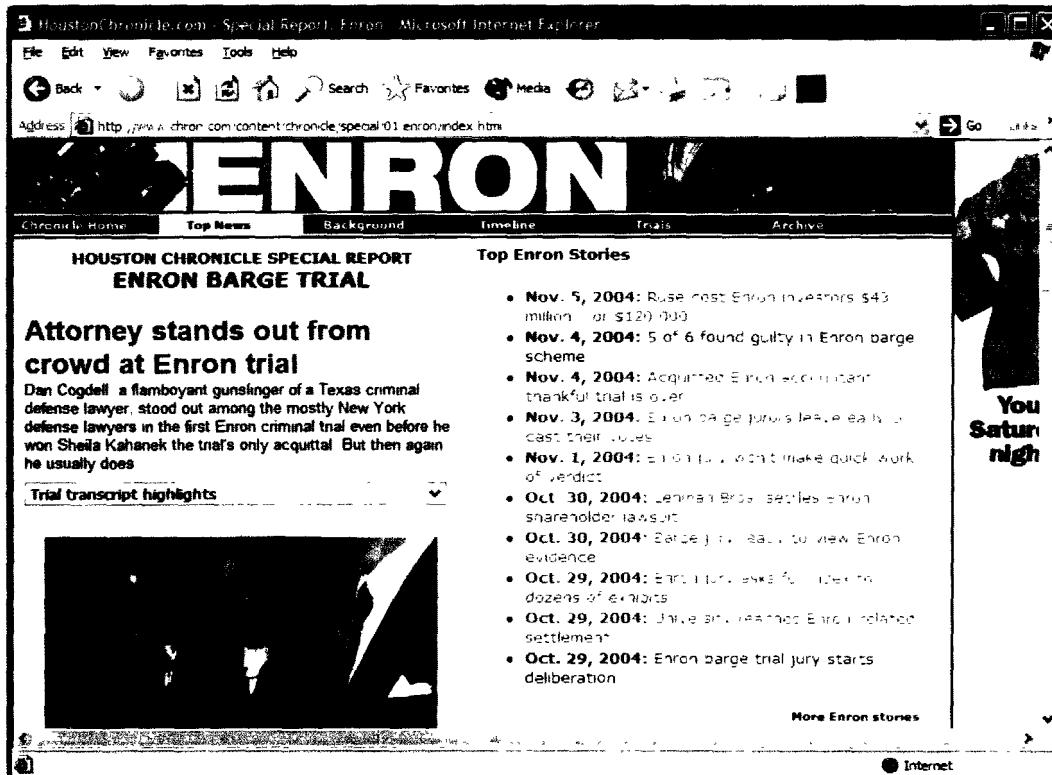


²⁵ Armstrong Ex. 14.

D. The Houston Chronicle's Website -- SPECIAL REPORT: ENRON

45. In the digital age, it is becoming more and more common for media outlets to host internet websites. For the past few years, I have visited, reviewed, and studied media-hosted websites, such as the New York Times (www.nyt.com) and CNN (www.cnn.com). I visit local television websites from major local markets periodically and am familiar with the offerings of several dozen such websites in the past two years. I visit and use each of the major network news websites through story links almost daily and have tracked media data regarding network news for the past five several years on The Vanderbilt Television News Service (<http://tvnews.vanderbilt.edu>), which collects summaries of national evening news broadcasts from the four major television networks.

46. The Chronicle is no exception. It hosts its own dedicated website with a prominent section entitled "SPECIAL REPORT: ENRON." (www.chron.com/content/chronicle/special/01/enron/index.html).



47. SPECIAL REPORT: ENRON is stunning. It is the most intensive and sophisticated interactive media tool focused on a single company or event that I have ever seen produced by a news media organization. The only other media-hosted websites that even approach this thoroughness have been devoted to coverage of local natural disasters or ongoing community traumas, such as the recent Florida hurricane season, the Oklahoma City Bombing, or the aftermath of the 9/11 terrorist attacks.

48. Among other things, SPECIAL REPORT: ENRON features:

- an archive of Houston Chronicle Enron coverage since October 2001, which includes several thousand separate articles.
(<http://www.chron.com/content/chronicle/special/01/enron/archive/index.html>);
- detailed personal and business profiles of the so-called "key players," including Skilling and Lay-- even to the extent of reproducing high school yearbook photographs;
- animation of various transactions at the heart of some of the Enron criminal trials, such as the Enron-LJM-Merrill Lynch barge transaction ([http://www.chron.com/cs/CDA/ssistory.mpl/special/enron/2872168, click "picturing it"](http://www.chron.com/cs/CDA/ssistory.mpl/special/enron/2872168,click));
- indictments, transcripts of argument, testimony, exhibits introduced at the Barges trial with downloadable PDF images.
(<http://www.chron.com/content/chronicle/special/01/enron/popups/barge-govexhibits.html>);
- interactive polls such as "What is Houston Best Known For?" (Enron 64%) (no longer available on-site);

- an "Enron Quiz," billed as "Are you an Enron junkie or merely well-informed?" and in which if you answer 15 out of 15 correctly you receive a message, "You must be a laid-off Enron employee." (<http://www.chron.com/content/chronicle/special/01/enron/quiz/quiznu.html>);
- a "Prosecution Scorecard," which also appears in the print version of some editions of the Chronicle, tracking who has been charged with what crimes and the disposition (if any) of their cases <http://www.chron.com/content/chronicle/special/01/enron/index.html>.²⁶

49. I have reviewed websites hosted by other media from Houston, Atlanta, Denver, and Phoenix. None has anything approaching even a fraction of the organized, searchable Enron-related information available on the Chronicle's website.²⁷

²⁶ Attached as Armstrong Ex. 24 is a "Virtual Walk-Through" of the Chronicle's website. The Walk-Through is broken down into five routes, 1 through 5, designated by tabs. Each route begins from the same place -- SPECIAL REPORT: ENRON's first page as of November 3, 2004 -- and weaves its way through the website going in different directions. Of thousands of different permutations, the Walk-Through demonstrates only a few, yet the depth of coverage is immediately apparent. Attached as Armstrong Ex. 27 is a multi-media DVD presentation capturing these features from the Chronicle's website, along with other aspects of the Houston media.

²⁷ Armstrong Ex. 25.

E. Qualitative Differences

50. Qualitative features of news coverage strongly impact the reader/viewer because placement of stories, depth of coverage, and, importantly, consistent use of certain recurring editorial themes explicitly and implicitly convey the news judgment of what it is a reader/viewer should be interested in, why the reader/viewer should care, and what outcome or resolution of an issue is deemed likely and desirable by prominent leaders, public officials or specialized experts.

51. The Houston Chronicle and local Houston television news outlets differ significantly from their counterparts in Atlanta, Denver, and Phoenix on each of these qualitative measures. Through prominent story placement, concentrated reporting on events and people in elaborate detail, and consistently repeating certain thematic portrayals of events and their current status, the local Houston news media reassures the Houston community that the prosecutorial Task Force is methodically investigating criminal conduct at Enron and is progressing up the line toward the successful prosecution of those most responsible for the trauma inflicted on the community by Enron -- Jeff Skilling and Ken Lay.

52. The depth of this difference in coverage is a function of the fact that in Houston, unlike most of the rest of the country, the Enron bankruptcy and its impact is both a national and local story.²⁸ Enron's bankruptcy and associated problems have rippled through Houston at many levels and is perceived to have affected its residents uniquely. Based on the accounts of various media, the Houston community, more than any other place in the country, feels it bore the brunt of Enron's demise. This community-wide perception is not reflected in the reporting of the news media in Atlanta, Denver, and Phoenix.

²⁸ New York as the financial center of the country and Washington as the political nexus for government regulation and law enforcement could be described as having something approaching a "local story" interest although the events surrounding the fall of Enron have only had impact or aggravated a small percentage of the two cities denizens.

(i) Placement, Prominence, and Interconnectedness of Stories

53. Placement of one or more articles on the front page of a paper, and to a lesser extent, the front pages of sections, page jumps to groups of articles nested together on full pages without advertising, the regular use of elaborate explanatory graphics, front page keys, recurring custom story logos and the frequent use of pictures in elaborate layouts and other such features reflect a considered editorial judgment that a story is more important to its readers than other stories.

54. In the first ten months of 2004, the Chronicle ran more than 60 front page stories which dealt with "Enron." The four other papers combined ran less than 10.²⁹

55. Many of the Chronicle's front-page Enron stories were nested with other articles. For example, on April 30, 2004, Lea Fastow, ex-Enron employee and wife of former Chief Financial Officer, Andrew Fastow, pled guilty to charges of tax fraud. The Chronicle ran a front page story, continuing on page 8A, entitled "Lea Fastow gets deal with gets with reduced charge." The article about Ms. Fastow shared the front page with articles about the White House, 9/11, and the War in Iraq. Of the 4 papers in the other venues I examined, only the Atlanta Journal Constitution reported on Ms. Fastow's plea on April 30, and in that paper, the story comprised a total of a one square-inch block of text on page E2's "Daily Briefing" section.³⁰

56. Also on April 30, 2004, the Chronicle ran a separate Enron story unrelated to Ms. Fastow's guilty plea. This article concerned the government's request to alter Skilling's bond conditions as a result of an alleged incident that had occurred in New York several weeks earlier. That article, entitled "Prosecutors step up Skilling fight; He won't adhere to rules, they say."

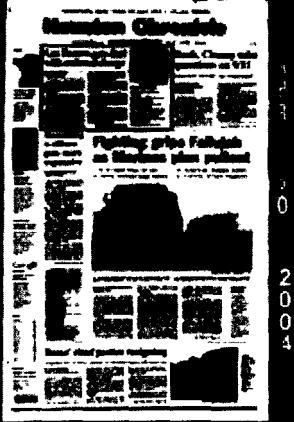
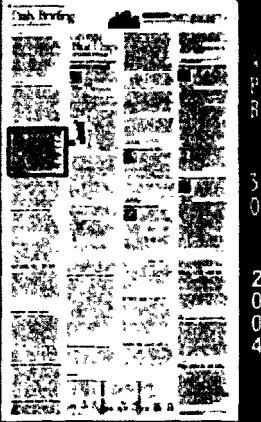
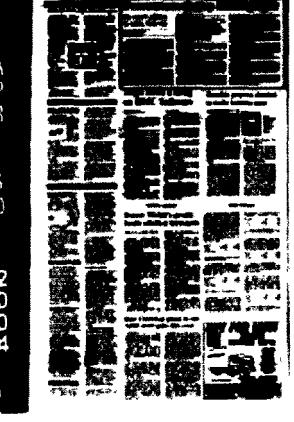
²⁹ *Id.* Ex. 14.

³⁰ *Id.* Ex. 17 (images of papers exhibit).

displayed, in a prominent inset, a photograph of quote from an Enron Task Force prosecutor.³¹ None of the other four papers surveyed ran a story on April 30, 2004, about Skilling. Below are images of the relevant pages from the Houston Chronicle and Atlanta Journal-Constitution on April 30, 2004 displaying difference in prominence and placement.³²

³¹ *Id.* at Ex. 17.

³² Attached as Exhibit 17 are similar images for each of the 5 surveyed papers on selected dates in 2002, 2003, and 2004, along with 8.5" by 11" copies of each newspaper page to facilitate viewing.

Houston Chronicle (4/30/04)	Atlanta Journal Constitution (4/30/04)
 A1	 E2
 A8	
 B2	

* Yellow indicates Enron-related story

57. On certain days, the Chronicle dedicated an enormous percentage of non-advertised space to Enron and Enron related stories. For example, on July 9, 2004, the day Ken Lay was indicted, the Chronicle dedicated three-quarters of its front page, 2 other full pages, and substantial portions of 4 other pages, all in the front or business sections, to this story.³³

(ii) Depth of Coverage

58. Not only has the Chronicle run more articles about Enron, Skilling, Lay, and Causey, its articles are more detailed than the stories in the Arizona Republic, Rocky Mountain News, Denver Post, and Atlanta Journal-Constitution. The same is true for Houston's television news coverage compared to that of the other venues.

59. When stations in Atlanta, Denver, and Phoenix run segments on Enron or one of Enron's executives, the segment generally is cursory and provides nowhere near the level of detail provided by Houston stations. For example, each of the local stations in the other venues covered the national stories when Mr. Skilling first, and Mr. Lay several months later, surrendered to authorities prior to arraignment. For the most part, those segments lasted between 30 seconds to 1 minute and typically provided factual "who, what, where" detail.³⁴

60. Houston coverage, in stark contrast, followed each man as he drove from his home to FBI headquarters, to the court, and back home, often providing "color" commentary -- such as interviewing former Enron employees for comment on the day's events -- absent from the coverage in the other venues studied.³⁵

61. The Houston media regularly reports aspects of Enron related criminal trials that the other media surveyed rarely touch, such as:

³³ Attached as exhibit 18 are images of the relevant pages from the July 9, 2004 edition of the Chronicle.

³⁴ *Id.* Ex. 19.

³⁵ *Id.* Ex. 19.

- Names of judges.³⁶
- Hometowns of counsel for Enron defendants, particularly when not Houston or Texas, connoting "outsider" status.³⁷;
- Names of transactions alleged to be fraudulent.³⁸
- Names of witnesses and defendants in related matters.³⁹

62. In isolation, these details could be innocuous, but as is the case in extraordinary events which reach everyone in the community, such as the bombing of the Oklahoma City federal building, the sheer repetition of details, as well as their interconnectedness with one another, creates the impression that the Houston Community is receiving an "authoritative account" unlike that to which they are normally accustomed from reading coverage of other topics, and unlike that to which readers in Atlanta, Denver, and Phoenix are accustomed with respect to the criminal trial of these Enron executives.

³⁶ The Chronicle identified Judge Lake as presiding over an Enron-related trial more than 30 times compared to a total of 2 in the other papers combined. Of the 86 television news broadcasts where Judge Lake's name was mentioned, all 86 were from local Houston stations. *See* Armstrong Ex. 14.

³⁷ Between March and May 2004, the Chronicle ran 6 stories identifying Daniel Petrocelli as Jeff Skilling's "California" or "Los Angeles" lawyer. Marroso Exs. 212, 239, 241, 280, 250, 251. Only one other paper -- the Atlanta Journal-Constitution -- has mentioned Petrocelli and it did not identify him as a California or Los Angeles lawyer. *See also* Armstrong Ex. 14.

³⁸ Andrew Fastow's partnerships LJM and LJM2 have been identified in 155 Chronicle articles, but only 9 times in the Arizona Republic, Denver Post, Rocky Mountain News, and Atlanta Journal-Constitution combined. The Chronicle mentioned "Raptor" 53 times compared to 10 times total in the four other papers combined. All 39 news broadcasts mentioning either "LJM" or "Raptor" occurred on local Houston stations, and many explicitly described those financial vehicles as illegal or fraudulent. *See* Armstrong Ex. 14.

³⁹ Michael Kopper appears in more than 100 Houston Chronicle articles, compared to less than 20 for the other three venues combined. Similar figures emerge for Ben Glisan: his name appears in more than 100 Chronicle articles and less than 10 in the other four papers combined. *See* Armstrong Ex. 14.

(iii) Story Themes and Content:

63. One of the most important qualitative components -- and one of the biggest disparities between the Houston media and the media of Atlanta, Denver, and Phoenix -- concerns repetitious story themes.

64. Over the course of publishing thousands of articles in the past 3 years about one company and its executives standing trial, the Chronicle has developed certain editorial themes that consistently appear in its articles. Often introduced through a catchy phrase ("Fall of Enron")⁴⁰ or graphic (multi-colored "E" on an angle), three such themes stand out: (1) sympathizing with and rallying around the perceived victims of Enron; (2) use of the pejorative to describe defendants and (3) the notion that media and prosecutors are piecing together a "puzzle", where all building blocks lead to the trial, and presumptive conviction of the "big fish," Skilling, Lay, and Causey.

65. The Houston television news media has adopted these same themes and continue to drive them home through such vivid and repeated visual imagery as replaying footage of Skilling's (or Fastow's) "perp walk" when details about Skilling's upcoming criminal trial are discussed.

66. These themes are not found to any discernible degree in any of the other three venues surveyed.⁴¹

⁴⁰ Over 600 Chronicle stories include "Fall of Enron" in the headline. *See* Armstrong Ex. 14.

⁴¹ At times, particularly in early- to mid-2002, the Atlanta Journal-Constitution ran stories describing briefly how the collapse of Enron affected the local Southern Gas Company. But, these stories contained none of the narrative "human interest" elements so prevalent in Houston.

67. *Perceived Victimization of Houston Through the Human Interest Story.* One of the Chronicle's primary editorial themes since December 2, 2001, has been the perceived victimization of the Houston community due to the Enron bankruptcy. Journalists often employ "human interest" stories to portray a sense of victimization. Because it could happen "to anyone, anytime," readers/viewers naturally associate and empathize with the subject of a human interest piece. Human interest stories are generally widely read and viewed, and their emotive impact on the reader/viewer is tremendous.

68. Since 2001, the Chronicle has run 94 victim-related stories, more than 6 times the number of victim-related stories in any of the other papers (Arizona Republic 16, Rocky Mountain News 13, Denver Post 6, Atlanta Journal-Constitution 11).⁴²

69. In that same timeframe, the Chronicle has run 133 stories about Enron layoffs, more than 6 times the number of stories about Enron layoffs in the Atlanta Journal-Constitution (22), and almost 15 times the number of stories about Enron layoffs in the Arizona Republic, Rocky Mountain News, and Denver Post, respectively (9, 7, and 6, respectively).⁴³

70. In 2004 alone, 15 Chronicle articles have discussed "Enron" and "victim(s)" in the same story. The Atlanta Journal-Constitution, Denver Post, Rocky Mountain News, and Arizona Republic had no such articles.⁴⁴

71. Emblematic of its focus on community victimization in its reporting was the Chronicle's multi-page layout entitled "The Faces of Enron." It showcased 9 separate ex-Enron employees and their families (who were pictured next to each article) and discussed in detail the impact Enron's bankruptcy had on their day-to-day lives. These profiles included: (a) a father of

⁴² Armstrong Ex. 14.

⁴³ *Id.* Ex. 14.

⁴⁴ *Id.* Ex. 14.

five facing "possible eviction," who "broke down when he said he had no money to buy his children Christmas gifts."; (b) a man who said he was "scared," "nervous," living "paycheck to paycheck," and "almost feels like he's failing his children."; (c) a woman whose home was destroyed by Tropical Storm Allison only months earlier, who was "hurt" and "angry," and whose friend, another employee was quoted as saying: "[i]t's like your husband has taken all your money and left you."; (d) a couple who met at Enron, and were planning to start a family, who lost \$575,000 and felt "shocked" and "humiliate[ed]."; (e) a man whose "eyes watered" as he told his young daughter that he had lost his job.; (f) a family whose "day-to-day reality is that you're worried and scared."; and (g) a man forced to sell his car because he needed money, who felt "empty" because he has "nothing to do."; (h) a woman, fresh out of college, who felt "a little bit betrayed" and was "almost certain she will have to relocate."; and (i) and a man who felt "helpless," and asked "[H]ow do I explain that to my kids?"⁴⁵

72. The fixation on the Enron-related human interest story persists in Houston. Just a few months ago -- more than two years after Enron declared bankruptcy -- the *Houston Press* published "Children of Enron," which purports to tell the story of "Generation E," the children "whose lives were disrupted by the fall."⁴⁶ According to the cover of the newspaper, among "Ken Lay's many legacies" are a child who had to contribute to house payments, a child who was forced to seek out therapy, and children who stopped eating or had to rely on food stamps and gas vouchers.

⁴⁵ Marroso Ex. 184-190, 192 (*Houston Chronicle*). Furthermore, in stories not directly related to victims *per se*, the Houston media often quotes or refers to former Enron employees or stockholders and their financial loss. *Id.* Ex. 17 ("For Dorothy Ricketts, 46, a former business analyst at Enron who earned \$70,000 a year, the testimony provided one more disturbing twist in what for her had been a 12-year saga at Enron. Much of her retirement money was tied up in Enron stock. How much, she won't say. "It hurts too much to talk about it."); 291 ("I think of the poor people at Enron who not only lost their 401(k) but their pension and their jobs," Kemper said. "What a horrible thing that was.").

⁴⁶ The *Houston Press* is an alternative weekly paper that reaches 300,000 readers per week. Armstrong Ex. 21.

73. No surveyed media outside of Houston ran anything remotely like either "The Faces of Enron" or "Children of Enron."

74. *Judgmental Terminology.* Partnered with its overriding focus on victims of Enron's "fall" is the Houston news media's tendency to incorporate pejorative and negative words when reporting about former Enron executives, especially Lay and Skilling, and its willingness to characterize prosecution witnesses using favorable terminology. This occurs to a much greater degree in Houston than in the other venues.

75. Words like fraud, scandal, convict, sham, misrepresent, and bogus are used in connection with Enron generally and with these defendants specifically far more often by the Chronicle than its peer papers in Atlanta, Denver, and Phoenix. Many of the connections connote that a crime has occurred.⁴⁷

76. Local papers other than the Chronicle, including the Houston Press, Texas Monthly, and Texas Observer, have identified Skilling and Lay, respectively, as the "Best Local Boy Gone Bad" and Houston's "Bum Steer."⁴⁸

⁴⁷ Marroso Exs. 293 ("The indictment says that while employees and investors lost their shirts, Skilling made more than \$ 100 million in stock profits, salaries and bonuses. If he is convicted, you can forevermore say of any crooked corporate executive: 'He made a Skilling.'"); 294 ("MY HEART bleeds. I can't help it. It's just the way I am. When I see a guy who is down on his luck, I want to help him. Take Jeffrey Skilling.;The poor guy is destitute. His lawyers say he can't pay the taxes on his \$ 4.7 million home in River Oaks and his \$ 500,000 condo in Dallas. Not to mention his dry cleaning, grocery bill and bar tab."); 295 ("IF I'M ANDY Fastow or Jeff Skilling or any other top Enron alumnus, I'm not sleeping as well as I was earlier this week. It's more than Scrooge-like horror of images of a former protege paraded before cameras in shackles that disturbs my dreams. Former Enron Treasurer Ben Glisan Jr. isn't just an image. He's a danger. Prosecutors made a point of saying he's not cooperating.;You'd think that would be comforting, given what one lawyer told my colleague, Mary Flood: 'When Glisan flips, this could be a bloodbath.'"); 296 ("By allowing the company to meet its internal profit targets, the deal unleashed the payment of millions of dollars in bonuses and restricted stock to high-ranking executives, including Ken Lay, then the chief executive; and Jeffrey Skilling, then president, former executives said. 'This was absolutely a sham transaction, and it was an 11th-hour deal.'").

⁴⁸ Marroso Ex. 29, 33, 77 (Best Local Boy Gone Bad; Bum Steer articles).

77. Houston television news shows also employ judgmental terminology, often emphasized through intonation and gesture. Attached as Exhibit 26 is an illustrative video of one (of many) such news segments entitled "DESPERATE MEASURES." In it, an animated reporter describes the "powerful" testimony of former Enron treasurer Ben Glisan, who was "so smart he sounded like an accounting professor."⁴⁹

78. In many instances, the Chronicle ran stories that combined its human interest victimization focus with negative sentiments about Enron executives, particularly on their wealth, opulent homes, or seemingly excessive bonuses. For example:

- The Chronicle ran a story entitled "11 at Enron getting a fourth of \$55 million in bonus pool" that described the splitting of a bonus pool noting that "[m]any laid-off workers are angry about the retention bonuses."⁵⁰
- Another article reported on how a 70-year old woman, who lost \$175,000 on Enron stock was cheered and applauded at a Congressional hearing when she observed that "[t]here is no more work being done on" a \$4 million house ex-CFO Andrew Fastow had been building in the wealthy River Oaks section of Houston.⁵¹

79. Media in Atlanta, Denver, and Phoenix were far less likely to juxtapose the plight of perceived victims with the wealth of Enron's former executives. For example, of the 18 stories where Skilling, Lay, Fastow, or Causey's name was associated with the upscale River Oaks neighborhood of Houston, virtually all -- 17 -- appear in the Chronicle. Of the

⁴⁹ Armstrong Ex. 26.

⁵⁰ Marroso Ex. 284 (*Houston Chronicle*).

⁵¹ Marroso Ex. 286 (*Houston Chronicle*).

approximately 143 televised news segments making the same connection, 142 are from television stations in Houston.⁵²

80. “*Solving*” *The Puzzle of the Crooked E: All Pieces Leading To Lay and Skilling.*

Since at least late 2002, the primary editorial theme and focus of the local news media, driven largely by the Chronicle, has been on the Enron criminal investigations and trials and furthering its goal of answering for its readers the question “Who are the criminals most responsible for the collapse of Enron?”

81. The Chronicle’s answer to this question -- which, from the beginning, assumed that a crime had occurred and the responsible criminal at Enron must be identified -- is implicitly, and sometimes explicitly, that the people most criminally culpable are Enron’s “big fish” Lay and Skilling.⁵³

82. Below are examples of the Chronicle explicitly accusing Skilling, Lay, and Causey of criminal conduct:

- On July 9, 2004, the Chronicle ran a commentary on the front-page of its business section entitled, “What of Lay’s claims? Answers lie in Valhalla.” Accusing Lay of invoking the “doofus defense,” the author concluded: “It will be for a judge and a jury to decide whether any of that constitutes a crime in a legal sense. Lay’s lawyers are among the best in the country. When their smoke screen clears, they may have succeed in arguing Lay was not guilty by reason of ignorance. We all know better.”⁵⁴

⁵² Armstrong Ex. 14.

⁵³ Causey is implied to be guilty but not nearly as often described in terms that would indicate him to be “responsible” for the events. Marroso Ex. 222 (*Houston Chronicle*).

⁵⁴ *Id.* Ex. 35 (*Houston Chronicle*).

- Two days later, the Chronicle followed up on the “Valhalla” commentary with another about Enron’s former chairman and CEO, this one entitled “Lay’s World: All Fantasy, All the Time.” The author noted that in Lay’s “fantasy world … corporate leaders can accept responsibility while deflecting blame. Top lieutenants are allowed to do side deals with the company, but the fact that they might enrich themselves is an outrage. [¶] In Lay's World, concerns about the company's shady financial deals are brushed aside. When concern becomes reality, responsibility is brushed aside.”⁵⁵
- In July 2004, the Chronicle ran a story about an allegedly incriminating document allegedly initialed by Richard Causey and convicted ex-CFO Andrew Fastow, the so-called “Global Galactic” agreement. The headline read: “Enron memo could be big problem for Causey: Handwritten note sets out secret deals he and Fastow made.” The article included a graphic representation of the supposed agreement and quoted an anonymous defense lawyer as saying: “[I]t's pretty damning. With this in hand you no longer have to guess about the deal, you don't have to guess about the repurchase and you don't have to guess whether there was a promise... What was circumstantial evidence is now direct evidence.”⁵⁶
- The day after Skilling testified before Congress, the Chronicle headline read: “It’s kind of hard to believe” / Ex-Enron workers rip Skilling’s story.” The article critiqued Skilling’s testimony by quoting former Enron

⁵⁵ *Id.* Ex. 37 (*Houston Chronicle*).

⁵⁶ *Id.* Ex. 225 (*Houston Chronicle*). None of the four other papers surveyed has mentioned “Global Galactic” in any of its stories. *See* Armstrong Ex. 14.

employees who watched it: “He is lying; he knew everything. . . . I am getting sicker by the minute.” “He’s knowledgeable. He’s twisting things around. He’s not answering things directly.” “I don’t understand how he could be in the position he was in, and say he didn’t know what was going on. It’s unbelievable.”⁵⁷ A companion piece quoted local attorneys: “I’m glad he’s not my client. What an idiot. He’s in denial.” “It seems inconceivable that the Powers report, and what everyone else is saying, is wrong, and he is right.” “It’s not credible to say he knew he left this company in good financial shape. His story was such b.s.”⁵⁸

83. Because they use the prosecutors’ road map to measure the progress of the Task Force and critique its progress, the Chronicle and the local television news media often appear to hold the same perspective. The Chronicle regularly echoes and quotes experts espousing the Task Force’s strategic approach: force lower level Enron employee’s to plead guilty and turn on Fastow; force Fastow to plead guilty; and bargain sentence leniency to induce Fastow to testify against Skilling and Lay. This tactic, described as “a classic pattern of trying to turn people down the food chain into informants who help them make cases against those further up,”⁵⁹ is designed to develop “star witnesses”⁶⁰ who ultimately will testify against the top executives.⁶¹

84. The Houston media’s repeated explication of the prosecutors’ efforts to bolster their case, coupled with its persistent insinuation of the defendants’ guilt, creates an overall journalistic impression that the prosecutors have successfully woven together all the complicated transactions in question into a comprehensive picture which will allow them to prove the defendants’ guilt. This impression is reinforced by the Chronicle’s deliberate use of the

⁵⁷ Marroso Ex. 17 (*Houston Chronicle*).

⁵⁸ *Id.* Ex. 18 (*Houston Chronicle*).

⁵⁹ Marroso Ex. 220 (*Houston Chronicle*).

⁶⁰ Marroso Ex. 289 (*Houston Chronicle*).

⁶¹ Attached as exhibit 22 is a compilation, in narrative form with citations to articles, describing the evolution of the Chronicle’s coverage of the prosecution’s strategy.

“Prosecution Scorecard,” itself a powerful metaphor for an ever-forward marching prosecution, which strongly implies that it is only a matter of time before those listed on the card will be convicted or the prosecution will have failed. It is constantly emphasized that at the top of the list of those remaining are the most senior officials of Enron -- Skilling and Lay.

F. The Coverage of Barges Trial

85. Media coverage of the recent Nigerian Barges trial vividly illustrates how reporting of Enron criminal matters in Houston differs from the other venues I examined.

(i) Quantity of Coverage

86. Between September 19, 2004 and October 19, 2004 (30 days), the Chronicle ran 43 stories about the Barges trial. Of those, 3 stories ran on the front page of the paper and 10 others ran on the front page of the business section, demonstrating once again, that the editors of the Chronicle still consider Enron an important story to its readers. In stark contrast, the other four papers combined ran a total of 7 articles covering the Barges trial. Of those, four were mere “brief paragraphs” in the “Daily Briefing” section of the Atlanta Journal-Constitution.⁶²

87. The disparity in television coverage was even more dramatic. Compared with extensive coverage in the local Houston market – over 150 separate news segments, many lengthy – there were only nine television reports in the other venues combined, none extensive.⁶³

88. In its effort to maximize the readers comprehensive view of every aspect of the Enron criminal prosecution, the Chronicle included in its reports evidence offered by the prosecution that the Court ruled to be inadmissible because of possible jury prejudice.⁶⁴

⁶² Armstrong Ex. 14.

⁶³ Armstrong Ex. 20.

⁶⁴ *Id.* Ex. 236 (*Houston Chronicle*) (“When jurors hear closing arguments in the first Enron criminal trial today, they may also learn one of the accused bankers raked in \$10 million the year he’s accused of aiding Enron employees in a fraud.”).

(ii) Quality of Coverage

89. The quality of coverage also differed between Houston and the other venues. Whereas reporting in the other venues either ignored the trial entirely (Arizona Republic), or covered it in glancing detail with no attempt to tie events to Skilling, Lay or Causey (Atlanta Journal-Constitution, Denver Post, Rocky Mountain News), the Chronicle continued its theme of "piecing together the Enron puzzle." References to Skilling and Lay, as well as to the effect the Barges trial would have on their upcoming trial were pervasive.⁶⁵ Repeatedly, the local press provided its impression of the credibility witnesses and jury reactions⁶⁶ and characterized the transactions that were the subject of the trial -- from before the trial through to its reporting of the verdict -- in the same terms as the prosecution.⁶⁷

90. As it has consistently done, the Chronicle's website reflected the paper's general coverage. As part of a Q&A section written by the reporter covering the trial and billed as "What do barges off the coast of Nigeria have to do with Enron and why this trial really mattered," the Chronicle answered by reinforcing the importance of the Barges trial for the prosecution of the Skilling:

Q. No top officials involved. Small change for Enron. Why did this matter?

A. This case was a small, digestible example of the same kind of allegations prosecutors are making in all the other Enron cases. It boils down to accusing Enron executives not just of stealing from the

⁶⁵ *Id.* Ex. 292 (*Houston Chronicle*) ("Though the Justice Department's Enron Task Force obtained a successful conviction of Enron accounting firm Arthur Andersen for obstruction of justice in 2002, this case is the first to focus on a side deal like the ones that are the basis of the bigger cases against Enron's former chief executive officer, Jeff Skilling, and its former chairman, Ken Lay.").

⁶⁶ Marroso Ex. 275 (describing prosecution witness Michael Kopper as "unflappable"); Marroso Ex. 16 (KPRC-TV newscast describing prosecution Ben Glisan as "so smart, he sounded like an accounting professor").

⁶⁷ Marroso Ex. 230 (before trial, describing the barge transaction as a "sham," just "one more cooking of the books in a very busy corporate kitchen"); Marroso Ex. 275 (after trial, commenting that a layman could detect illegality because it was "a crazy way to do business").

cookie jar but also of misleading the public about how much it really had in its cookie jar. If a jury didn't care about this, it might not care about the bigger cases to come, including the case of ex-CEO Jeff Skilling, who's also accused in the barge deal....

Q. Where were Enron's bigwigs in this trial?

A. Ex-Chief Financial Officer Andrew Fastow, who pleaded guilty to two conspiracy charges and is cooperating with the government, is central to the barge deal but was not put on the stand. It's thought prosecutors are holding him in reserve for Skilling's trial.... <http://www.chron.com/cs/CDA/ssistory.mpl/special/enron/2605829#matters>

91. The Chronicle's coverage raised this point again as the verdict was announced. In an editorial entitled, "Jury agrees company executive and bankers engaged in a criminal enterprise. Did the top people know?" the Chronicle commented that "[t]he jury, which acquitted a former Enron accountant who testified she did not know about the improper element of the barge deal, found the evidence convincing. That is bad news for former Enron Chairman Ken Lay and former CEO Jeff Skilling, whose trial is coming up. The two are left with the defense that, although they were lavishly paid corporate chieftains, they didn't know what was going on at work and take no responsibility for it."⁶⁸

IV.
CONCLUSION

92. In conclusion, the local Houston news media have tried to provide the extensive information necessary to explain to the Houston community what happened at Enron and who is responsible for it. They have supported the full range of community institutions perceived to

⁶⁸ Marroso Ex. 255 (*Houston Chronicle*), Reporting a detail and connection no other media approached, the Chronicle even tied the Barges verdict to these defendants' motion to transfer venue, a motion that had not yet been filed. Citing Jacob Frenkel, "a former federal prosecutor in the Washington D.C.-area," the Chronicle suggested that Kahanek's "acquittal will impede other defendants in the claim that excessive publicity has tainted the Houston jury pool against all-Enron related defendants."